IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2506 of 2006

to

SPECIAL CIVIL APPLICATION No. 2511 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY GENERAL MANAGER – Petitioner(s)

Versus

THAKORE DHULAJI VALAJI - Respondent(s)

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Appearance :

MR RR MARSHALL for Petitioner(s) : 1,
Mr. D.R. Bhatt, for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 20/02/2006

ORAL JUDGMENT

Rule. Mr. D.R. Bhatt, learned advocate for the

respondent waives service of rule on behalf of the respondent. With the consent of parties the matter is taken up for final hearing/disposal.

2. The Oil and Natural Gas Corporation Limited (“ONGC” for short), petitioner, has filed this petition challenging the order dated 14.2.2006 passed by the learned Principal Senior Civil Judge, Mehsana below Exh. 15 in Regular Execution Application No. 367 of 2005. By the impugned order the learned Judge has rejected the application Exh. 15 filed by the judgement debtor ONGC. The learned Judge has further ordered and directed the judgement debtor-ONGC to deposit the rest of the decretal amount on or before 24.2.2006. If the amount is not deposited on or before 24.2.2006, warrant of recovery a prayed for shall be issued on 25.2.2006.

3. Heard Mr. Marshall, learned advocate for the petitioner.

4. The facts giving rise to this petition are as under:

5. Some of the land of Shri Thakore Dhulaji Valaji

of District Mehsana was temporarily acquired under the provisions of Land Acquisition Act (hereinafter referred to as “the Act”) by ONGC for the purpose of oil exploration. The Land Acquisition Officer has passed award (approximately making over Rs. 1 crore). Thereafter, certain amount was to be paid by ONGC to the present respondent.

6. Being aggrieved and dissatisfied with the aforesaid order, Reference was preferred by the respondent and others bearing Reference Nos. 3121/2003 to 3127 of 2003. The learned Civil Judge, Mehsana, was pleased to decide the References and in the said References the learned Judge passed an order as per the Act and ordered ONGC to pay additional amount of Rs. 4.30 per sq. mtr. to the respondent.

7. Being aggrieved and dissatisfied with the aforesaid order, ONGC preferred First Appeals before this Court being First Appeal No. 397 of 2005 and others. This Court has admitted those appeals on 4.3.2005. In the said matters, the Deputy General Manager filed Civil Applications being Civil Application No. 1559 of 2005 and others praying for interim relief. In the said Civil

Applications my learned brother Mr. Justice A.M. Kapadia was pleased to pass the following operative order on 20.4.2005:

> "For the foregoing reasons, all the applications succeed and accordingly they are allowed with no order as to costs. Prayer in terms of para 3(a) is granted on condition that the applicant/appellant shall deposit 35% of the total awarded amount, within a period of 6 weeks hereof before the Reference Court. (Approximately more than Rs. 30 lakhs) The Reference Court is directed to permit the opponents/original claimants to withdraw the said amount unconditionally. Rule is made absolute in all the Civil Applications."

8. Being aggrieved and dissatisfied with the order of the learned Single Judge dated 20.4.2005, ONGC preferred Special Leave Petition before the Hon'ble Supreme Court. However, ONGC could not be able to obtain any order from the Hon'ble Supreme Court regarding extension of time to make deposit.

8.1 Meanwhile, Patel Gandabhai Prabhudas, one of the

respondents in appeal filed Civil Application No. 10892 of 2005 for vacating interim relief which was granted by my learned brother Mr. Justice A.M. Kapadia. The said Civil Application reached hearing before this Court (Coram: A.L. Dave, J) and this Court was pleased to pass the following order on 22.11.2005:

> "In view of the fact that the order passed by this Court on 20th April, 2005 is conditional, requiring the respondent to deposit 35% of the awarded amount within a period of six weeks, there is no question of vacating the order if the amount is not deposited with the said period. Further it is stated at the Bar by learned advocate Mr. Marshall, that the order dated 20th April, 2005 is challenged before the Apex Court and the matter is pending before the Apex Court. In that view of the matter also, no indulgence is required to be granted to the applicants. The applications stand disposed of accordingly."

9. Meanwhile, ONGC deposited the amount as per the order of this Court but not within the stipulated time as stated in the order of this Court but after some time.

Thereafter, the SLP was heard by the Apex Court on 2.1.2006 and the Hon'ble Supreme Court was pleased to pass the following order:

> “Counsel for the petitioner submits that the Reference Application under Section 35(3) of the Land Acquisition Act was directly filed by the petitioner before the Court. Hence notice. We are told that the amount as directed in the impugned order has already been deposited by the petitioner. The claimants may withdraw the same but only on furnishing security. List after service is complete.”

10. Meanwhile, the respondent has initiated execution proceedings. In execution proceedings the learned Judge has been pleased to pass order on 13.1.2006. In view of the order of the Hon'ble Supreme Court dated 2.1.2006 the learned Judge stated that when the Hon'ble Supreme Court has permitted the claimants to withdraw the amount but only on furnishing security, he passed order that the land of which claimants are the owners may be treated as security. Mr. Marshall, learned advocate, has stated that the said order may be placed on record and the said order dated 13.1.2006 is taken on

record.

11. Meanwhile, ONGC has filed Application exh. 15 in Darkhast No. 367 of 2005 in which the learned Judge passed order on 14.2.2006 directing ONGC to deposit 65% of the amount on or before 24.2.2006 failing which warrant of recovery shall be issued on 25.2.2006. The learned advocate for the petitioner states that said order of the learned Judge is contrary to and inconsistent with the order of the Hon'ble Supreme Court as well as the order of this Court and therefore the Court may stay the said orders. It was also stated that as per the order dated 20.4.2005 ONGC has already deposited 35% of the awarded amount and the claimants have withdrawn the amount.

12. The learned counsel for the petitioner has submitted that in this case first order was passed by the High Court admitting the appeals on 4.3.2005 and on 20.4.2005 and against which ONGC filed SLP and the Hon'ble Supreme Court was seized of the matter. Not only that even in the Civil Application No. 10892 of 2005 and others this Court has also passed order.

13. The learned advocate for the petitioner has

submitted that judicial discipline and decorum require that when the matter is at large before this Court as well as the Hon'ble Apex Court, the Executing Court may not be hurry to dispose of the matter. The trial court must appreciate that in this case ONGC has already deposited 35% of the awarded amount which the claimants have withdrawn and received.

14. I have considered the facts and circumstances of the case. Mr. Bhatt, learned advocate for the respondent has tried to support the order of the learned trial Court. He has stated that the trial court has already passed order on 29.10.2005, 23.12.2005 and 16.1.2006 but ONGC has failed and neglected to comply with the said orders and the learned trial Court has no option but to dispose of the execution petition in accordance with law and therefore the trial Court has passed the impugned order.

15. It appears that the trial Court is not aware about the principle laid down by the Hon'ble Supreme Court in the case of SIHOR NAGAR PALIKA BUREAU VS. BHABHLUBHAI VIRABHAI & CO. reported in 2005(4) SCC 1. That was a case against interim order passed by this Court wherein money decree was passed and in the said

matter the Court directed to deposit in the Court and in that context in para 8 the Hon'ble Supreme Court has observed as follows:

> “In the facts and circumstances of the present case and having taken into consideration the respective submissions made by the learned counsel for the parties in very many details, we are satisfied to hold that the High Court ought to have permitted furnishing of security instead of insisting on deposit in cash of the amount as directed by the High Court. It is not the case of the respondent that in the event of the appeal being dismissed the decretal amount may not be recovered from the appellant. On the other hand, the appellant has made out a prima facie strong case for the hearing of the appeal on its merits and further a case that public interest would be better served by the amount being retained by the appellant during the pendency of the appeal. While making these observations, we should not be understood as having made any observation touching the merits of the case amounting to prejudging any of the issues arising for decision in the appeal and

ex abundanti cautela we clarify that the appeal shall be heard by the High Court on its own merits uninfluenced by anything said in this order. The appellant has already furnished security of immovable property to the satisfaction of the trial court pursuant to the order dated 30.1.2004 passed by this Court."

16. In view of these facts and circumstances of the case particularly when the appeals are already admitted and pending before this Court and this Court is to examine the legality and correctness of the original award passed by the trial Court awarding the amount, the anxiety and unnecessary hurry shown by the trial court in execution proceedings was unjustified and unwarranted.

17. However, in my view when the order has been passed the learned trial Judge has got two orders of the High Court as well as the order of the Hon'ble Supreme Court and particularly the principles laid down by the Hon'ble Supreme Court in SIHOR NAGAR PALIKA BUREAU (supra). In my view the concern and hastiness shown by the trial court in directing ONGC to deposit the remaining 65% (amounting to approximately Rs. 70 lakhs)

of the award by 24.2.2006 failing which issuing warrant for recovery is unjustified and unwarranted because both on question of facts and law the order passed by trial Court will nullify the first appeals filed by ONGC before this Court and the stay granted by this Court.

18. In view of the aforesaid observation made by this Court, the order passed by the learned trial Judge dated 13.1.2006 wherein the learned trial Judge has considered the fact that as per the order of the Hon'ble Supreme Court when the Hon'ble Supreme Court has directed that the amount is to be given after showing security and as the land belongs to the original owner and temporary possession is with the ONGC, the land in question has to be considered as security is not correct because in this case this is only a temporary acquisition and as soon as the purpose of the acquisition is over at any time, ONGC is obliged to give back the land in question to the owner. The effect of the order of the learned trial Judge is that people will take additional compensation and thereafter when the temporary acquisition is over, the person will get back the land. Now that is not the object of the order passed by the Hon'ble Supreme Court and therefore the land in question cannot be considered as a security and therefore the order dated 13.1.2006 is not

correct and the same is quashed and set aside.

19. In view of the reasons which I have given earlier, the order dated 14.2.2006 by which the learned trial Judge has directed ONGC to deposit rest of the decretal amount on or before 24.2.2006 and if the amount will not be deposited on or before 24.2.2006, the warrant of recovery as prayed for shall be issued on 25.2.2006 is unjustified and unwarranted in the facts and circumstances of the case and the reasons which I have given earlier. Therefore, the said order dated 14.2.2006 is also quashed and set aside.

20. The petition is allowed. Rule is made absolute accordingly. No order as to costs. A simple copy of the order may be given to Mr. Marshall, learned advocate for the petitioner.

(K.M. MEHTA, J)

(pkn)